

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JACQUIE CHANDLER

Plaintiff,

v.

INDYMAC BANK, F.S.B.; et al.,

Defendants.

3:10-cv-0769-LRH-RAM

ORDER

Before the court is defendant NDeX West LLC's ("NDeX") motion for summary judgment. Doc. #84. Plaintiff Jacquie Chandler ("Chandler") filed an opposition (Doc. #93) to which NDeX replied (Doc. #96).

I. Facts and Procedural History

In February, 2006, Chandler purchased real property through a mortgage note and deed of trust originated and executed by defendant Indymac Bank, F.S.B. ("Indymac"). Eventually, Chandler defaulted on the mortgage note and defendants initiated non-judicial foreclosure proceedings.

Subsequently, Chandler filed a complaint against defendants alleging six causes of action: (1) violation of state foreclosure laws, NRS 107.080; (2) fraud in the inducement; (3) unjust enrichment; (4) breach of good faith and fair dealing; (5) slander of title; and (6) abuse of process. Doc. #1, Exhibit A. In response, defendants filed various motions to dismiss. Doc. ##9, 19, 38.

1 On May 11, 2011, the court granted in-part and denied in-part the various motions to
2 dismiss. Doc. #56. In particular, the court granted the motions to dismiss as to all defendants except
3 for NDeX, and granted NDeX's motion to dismiss as to all claims except for Chandler's first cause
4 of action for violation of NRS 107.080. *Id.* Thereafter, NDeX filed the present motion for summary
5 judgment as to the one remaining cause of action, violation of NRS 107.080. Doc. #84.

6 **II. Legal Standard**

7 Summary judgment is appropriate only when "the pleadings, depositions, answers to
8 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
9 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
10 law." Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
11 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable
12 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
13 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

14 The moving party bears the burden of informing the court of the basis for its motion, along
15 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
16 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
17 must make a showing that is "sufficient for the court to hold that no reasonable trier of fact could
18 find other than for the moving party." *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
19 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

20 To successfully rebut a motion for summary judgment, the non-moving party must point to
21 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson*
22 *Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A "material fact" is a fact "that might affect the
23 outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
24 (1986). Where reasonable minds could differ on the material facts at issue, summary judgment is
25 not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute regarding a material
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1 fact is considered genuine “if the evidence is such that a reasonable jury could return a verdict for
2 the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a scintilla of
3 evidence in support of the plaintiff’s position will be insufficient to establish a genuine dispute;
4 there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at 252.

5 **III. Discussion**

6 **A. Violation of NRS 107.080**

7 In her complaint, Chandler alleges that the notice of default filed by NDeX was defective
8 because it was recorded on behalf of NDeX who was not the trustee at the time the notice of default
9 was filed. *See* Doc. #1, Exhibit A. In the court’s order denying NDeX’s motion to dismiss, the court
10 found that Chandler has sufficiently alleged a violation of NRS 107.080(2)(c) because there was
11 “no evidence before the court that NDeX was an authorized agent of the beneficiary” at the time
12 that it recorded the notice of default. Doc. #56. In response, NDeX filed the present motion for
13 summary judgment arguing that, at the time it recorded the notice of default, it was acting as an
14 agent for the beneficiary Deutsche Bank. *See* Doc. #84.

15 The court has reviewed the documents and pleadings on file in this matter and finds that the
16 evidence before the court establishes that defendant NDeX was acting as an agent for the
17 beneficiary when it recorded the underlying notice of default. NDeX had authorization to initiate
18 the non-judicial foreclosure proceedings against Chandler from OneWest Bank, the loan servicer
19 on behalf of Deutsche Bank. *See* Doc. #85, Boyle Affidavit, ¶6; Doc. #85, Pummill Affidavit, ¶5-7.
20 Further, Chandler has failed to provide any evidence in opposition to the motion for summary
21 judgment showing that NDeX was not authorized by the beneficiary, or any other agent for the
22 beneficiary, to record the underlying notice of default. Therefore, the court finds that NDeX was
23 authorized to record the underlying notice of default pursuant to NRS 107.080 and shall grant the
24 motion for summary judgment accordingly.

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1 IT IS THEREFORE ORDERED that defendant's motion for summary judgment (Doc. #84)
2 is GRANTED. The clerk of court shall enter judgment in favor of defendant NDeX West, LLC
3 against plaintiff Jacquie Chandler as to plaintiff's remaining cause of action for violation of
4 NRS 107.080.

5 IT IS FURTHER ORDERED that plaintiff's motion for reconsideration (Doc. #72); motion
6 for summary judgment (Doc. #83); and defendant's motion for partial summary judgment
7 (Doc. #75) are DENIED.

8 IT IS SO ORDERED.

9 DATED this 11th day of April, 2012.



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12 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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